

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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JAMES WILLIAMS,

Petitioner,

-v-

J. LA MANNA,

Respondent.

18 Civ. 8709 (PAE) (KNF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Before the Court is the July 9, 2019 Report and Recommendation of Magistrate Judge Kevin N. Fox, recommending—in response to respondent La Manna’s motion to dismiss Williams’ habeas petition as untimely—that the Court dismiss this action. Dkt. 14 (the “Report”). For the following reasons, the Court adopts the Report in full.

I. Background

A. Facts

The Court incorporates by reference the summary of the facts set forth in the Report. *See* Report at 1–3.

B. Procedural History

On September 24, 2018, Williams filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dkt. 1. On December 28, 2018, La Manna filed a motion to dismiss the petition as untimely, Dkt. 10, a supporting declaration, Dkt. 11, and supporting memorandum of law, Dkt. 12.

On July 9, 2019, Judge Fox issued the Report. Dkt. 14. On the same day, Judge Fox’s chambers mailed a copy of the Report to Williams. Williams has yet to file any objections.

II. Discussion

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF) (RLE), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC) (AJP), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009), *aff’d* 453 Fed. App’x 88 (2d Cir. 2011)); *see also, e.g., Mims v. Walsh*, No. 04 Civ. 6133 (BSJ) (FM), 2012 WL 6699070, at *2 (S.D.N.Y. Dec. 23, 2012) (quoting *Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006)).

Because neither party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Fox’s thorough and well-reasoned Report reveals no facial error in its conclusions. The Court, therefore, adopts the Report in its entirety.


In addition, the Report expressly states that “[f]ailure to file objections within fourteen (14) days will result in a waiver of objections and will preclude appellate review.” Report at 6. Accordingly, each party’s failure to object to the Report operates as a waiver of appellate review. *See Monroe v. Hyundai of Manhattan & Westchester*, 372 F. App’x 147, 147–48 (2d Cir. 2010) (summary order) (quoting *Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992)).

CONCLUSION

For the reasons stated herein, the Court adopts the Report in full. Williams’ petition is hereby dismissed with prejudice. *See* 28 U.S.C. § 2244(d)(1).

The Court respectfully directs the Clerk of Court to terminate the motion pending at docket 10.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: August 9, 2019
New York, New York